

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CONROY HIBBERT, JR.,

Plaintiff,

-against-

THE STATE OF NEW YORK, *et. al.*,

Defendants.
----- X

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1:22-cv-8257-GHW

ORDER OF SERVICE

GREGORY H. WOODS, United States District Judge:

Plaintiff Conroy Hibbert, Jr., who is currently in the custody of the New York State Department of Corrections and Community Supervision and incarcerated in Gouverneur Correctional Facility, brings this civil rights complaint *pro se*, alleging that, while he was in the custody of the New York City Department of Correction and detained in the Otis Bantum Correctional Facility (O.B.C.C.) on Rikers Island, Defendants violated his rights. By order dated October 12, 2022, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.¹

I. STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

(2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible—not merely possible—that the pleader is entitled to relief. *Id.*

II. DISCUSSION

A. The State of New York

Plaintiff’s claims against the State of New York must be dismissed. “[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states’ Eleventh Amendment immunity” *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). “The immunity recognized by

the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state.” *Id.* New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states’ immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm’n*, 557 F.2d 35, 40 (2d Cir. 1977). Plaintiff’s § 1983 claims against the State of New York are therefore barred by the Eleventh Amendment and are dismissed.

B. The Department of Corrections

Plaintiff’s claims against the New York City Department of Correction must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) (“[A] plaintiff is generally prohibited from suing a municipal agency.”).

In light of Plaintiff’s *pro se* status and clear intention to assert claims against the City of New York, the Court construes the complaint as asserting claims against the City of New York, and directs the Clerk of Court to amend the caption of this action to replace the Department of Corrections with the City of New York. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the City of New York may wish to assert.

C. Rikers Island O.B.C.C.

Plaintiff’s claims against Rikers Island O.B.C.C. must also be dismissed. Section 1983 provides that an action may be maintained against a “person” who has deprived another of rights under the “Constitution and Laws.” 42 U.S.C. § 1983. Rikers Island O.B.C.C. is not a “person” within the meaning of § 1983. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989) (state is not a

“person” for the purpose of § 1983 claims); *Zuckerman v. Appellate Div., Second Dep’t Supreme Court*, 421 F.2d 625, 626 (2d Cir. 1970) (court not a “person” within the meaning of 42 U.S.C. § 1983); *Whitley v. Westchester Cnty. Corr. Fac. Admin.*, No. 97-cv-420, 1997 WL 659100, at *7 (S.D.N.Y. Oct. 22, 1997) (correctional facility or jail not a “person” within the meaning of § 1983). Therefore, Plaintiff’s claims against Rikers Island O.B.C.C. are dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

D. Rule 21 of the Federal Rules of Civil Procedure

Plaintiff asserts that, while he was detained in O.B.C.C., prison officials failed to provide hand sanitizer and other sanitizing products, and they did not enforce the mask mandate, but he does not list the individuals responsible for the alleged deprivation of his rights. The Clerk of Court is therefore directed, under Rule 21 of the Federal Rules of Civil Procedure, to amend the caption of this action to add “John Doe 1- 5,” as Defendants. This amendment is without prejudice to any defenses that these Defendants may wish to assert.

E. John Doe Defendants

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Department of Corrections to identify the John Doe Defendants who failed to provide hand sanitizer and other sanitizing products, and who failed to enforce the mask mandate. It is therefore ordered that the New York City Law Department, which is the attorney for and agent of the New York City Department of Corrections, must ascertain the identity and badge number of each John Doe whom Plaintiff seeks to sue here and the address where the defendant may be served.² The New York City Law Department must provide this information to Plaintiff and the Court within sixty days of the date of this order.

² If the Doe defendant is a current or former DOC employee or official, the New York City Department of Correction should note in the response to this order that an electronic request for a waiver of service can be made under the e-

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order asking Defendants to waive service.

III. CONCLUSION

The Court dismisses Plaintiff's claims against the State of New York, Department of Corrections, and Rikers Island O.B.C.C. *See* 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii).

The Clerk of Court is directed to add the City of New York as a Defendant under Fed. R. Civ. P. 21. The Clerk of Court is further directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants the City of New York waive service of summons. Finally, the Clerk of Court is further directed to mail a copy of this order and the complaint to the New York City Law Department at: 100 Church Street, New York, New York 10007.


The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If the Doe defendant is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the New York City Department of Correction must provide a residential address where the individual may be served.

The Clerk of Court is directed to mail an information package to Plaintiff.

SO ORDERED.

Dated: October 26, 2022
New York, New York



GREGORY H. WOODS
United States District Judge